

Monte J. White and Associates, PC
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

IN RE :	§	CASE NO. 09-70559-HDH-13
	§	
Warren Olin Gould	§	CHAPTER 13
And	§	
Stacey Rhea Gould	§	
DEBTOR(S)	§	ADVERSARY PROCEEDING NO.

Warren Olin Gould	§
And	§
Stacey Rhea Gould	§
PLAINTIFFS	§
	§
V.	§
Wichita Falls USA Auto Sales, Inc.	§
dba USA Auto Sales	§
DEFENDANT	§

MOTION FOR TURNOVER,
SANCTIONS AND CIVIL CONTEMPT OF COURT

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above named debtor in the above-styled cause requests the Court to order turnover of property of bankruptcy estate to Debtors, find USA Auto Sales Inc. (“USA Auto Sales”), in civil contempt of court under Bankruptcy Rule 9020 and 11 U.S.C. § 362 (a)(6) and grant the debtor sanctions under 11 U.S.C. § 362 (h) and as grounds therefore would respectfully show the Court as follows:

JURISDICTION

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334 and 11 U.S.C. § 105 and § 362.

FACTS

2. On November 2, 2009, the above named debtors filed a voluntary petition for relief under Chapter 13 of the U.S. Bankruptcy Code.
3. On November 1, 2009, Debtors' vehicles, a 2003 GMC Yukon and a 2003 Chevrolet pickup, were repossessed by USA Auto Sales.
4. Upon the case being filed, Nancy McIlvanie, Monte White's legal assistant, contacted USA Auto Sales by phone and advised them of the bankruptcy filing. Sissy, an employee of USA Auto Sales, requested the Notice of Bankruptcy Case Filing, which was faxed to them.
5. On the afternoon of November 2, 2009, USA Auto Sales was contacted to inquire as to what time the debtors would be able to retrieve the vehicles. We were told that USA Auto Sales was represented by Gene Douglass, Attorney at Law, and we would need to contact him to retrieve the vehicles.
6. We then contacted Mr. Douglass' office to inquire about the return of the vehicles. Mr. Douglass' legal assistant advised that Mr. Douglass was not in the office but that she would contact USA Auto Sales and advise them to return the vehicles. After ending the phone call, a demand letter and Notice of Bankruptcy Case Filing was faxed to Mr. Douglass' office requesting return of the vehicles by noon on November 3, 2009.
7. On November 3, 2009, around 10:00 AM, we contacted Gene Douglass' office to again inquire as to the status of the return of the vehicles. Mr. Douglass' legal assistant indicated that she has left a message for Gary Mills, owner of USA Auto Sales, and faxed a copy of the letter they had received. Mr. Douglass' legal assistant also indicated that Mr. Douglass had not been retained to represent Mr. Mills on this case and that we needed to contact USA Auto Sales regarding the matter. We then contacted USA Auto Sales by phone and spoke with Sissy. She indicated that she had not been able to speak with Gary Mills, and was not sure when or if the vehicles would be returned.
8. At 10:45 AM, we were informed by Mr. Douglass' legal assistant that Mr. Mills would not be returning the vehicles until he was able to speak to Mr. Douglass who would not be back in his office until November 10, 2009. She said Mr. Mills was also

demanding reimbursement of the repossession fees before the vehicles would be returned.

9. Section 362(a) of the United States Bankruptcy Code, which governs this case, strictly prohibits the action that USA Auto Sales took against the Debtors' property. There are no exceptions for the action taken under Section 362(b). As such, Section 362(h) of the Bankruptcy Code provides that the Debtors "shall" recover actual damages, including costs and attorneys' fees, and "may" recover punitive damages, for the injury caused them by USA Auto Sales' willful violation of the automatic stay.

PRAYER

WHEREFORE PREMISES CONSIDERED, the Debtors pray that the Court set this matter for hearing at its earliest opportunity and that the Court find USA Auto Sales in contempt of court and impose such sanctions as the Court deems appropriate including attorney's fees, and actual damages to the Debtors, Gould, Warren Olin and Stacey Rae Gould, for the loss of their vehicles.

Respectfully submitted,

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/s/Monte J. White
State Bar No. 00785232
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 3, 2009, a true and correct copy of the foregoing "Motion for Turnover, Sanctions and Civil Contempt of Court" was served on the following by U.S. Mail and the adverse party, USA Auto Sales, by certified, return receipt requested mail.

Walter O'Cheskey
6308 Iola Avenue
Lubbock, Texas 79424

USA Auto Sales, Inc.
1307 Scott Ave
Wichita Falls, TX 76301

CERTIFIED MAIL/RETURN RECEIPT REQUESTED
7000 1530 0002 9782 4770

Gene Douglass
Attorney at Law
1811 Tenth Street
Wichita Falls, Texas 76301

William T. Neary
1100 Commerce Street, 9C60
Dallas, Texas 75302

/s/Monte J. White